by deposition or in court, where you selected, as a preferred model, one that had an increasing propensity to sue with regard to asbestos estimation?

A I'm sorry. Testimony -- what did I do under what circumstances?

Q When did you give either deposition testimony or trial testimony in an asbestos estimation context where your preferred estimate relied upon an increasing propensity to sue, if you know?

A Sitting here, I can't speculate.

Q When is the first you recall?

A I'm quite sure I did it in Fuller Austin, which is work I did in '97 and '98. During that period of time, I was working primarily on breast implant litigation. I wasn't doing much estimation for asbestos cases. I don't recall what I had done for National Gypsum in that era. It would have been some time between 1995 and 1997 or so. 1998 at the latest.

Q Can you point to any contemporaneous documents in 1993 or through the end of January 1994 in which responsible observers had suggested that there should be an increasing propensity to sue in

asbestos estimations?

A I'm not aware of anyone who forecasted in that era having using increased propensities to sue, and the data that were available in that period of time were quite uncertain with regard to what the trends were. It probably wouldn't have -- it really didn't give strong support for any trend, up, down, unchanged. There was uncertainty, and probably most -- the strongest was an unchanged propensity to sue.

Because more or less -- well, there's two things. There's the level of claims, and then there's what was happening in the litigation. The level of claims were relatively stable in the early to mid-'90s.

Q Are you aware of any responsible experts in asbestos estimation up through January of 1994, other than yourself, who had given opinions that the most probable trend was a decreasing propensity to sue as of January 31, 1994?

A I don't think so. I can't think of anyone who may have forecast that.

Q Let me ask you to flip over to page 13 in your report, and let's change subjects and talk a little bit about your transition matrix. First of

all, can you define for us and the jury what you mean by the term "transition matrix" as you use it in this report?

A In the database of any asbestos defendant, invariably, you see some cases where the database does not identify the disease claim, the disease process involved, but since the values of claims vary, depending upon the disease process the claimant alleges, and since our forecasts are based upon disease, it's valuable to try and impute or estimate what the distribution of diseases are among claims that don't have a specified disease. So the transition matrix is essentially a set of numbers that say among those claims that don't have an identified disease, what percentage of them are likely to be mesothelioma, what percent lung cancer, and so on.

You can also use a transition matrix to go from an alleged disease to a confirmed disease. There are other uses of it, but in this context, it's used to try to impute or estimate what are the diseases, actual diseases among claims with an unidentified disease, data that's unidentified in the database.

Q Go to page 13 you cite that the CCR -- if

you'll look at that last paragraph on page 13, I think the third sentence, I'm going to read it. You say "CCR had done an empirical study which was available to GAF in early 1994 using testimony and evidence from the National Gypsum confirmation hearing."

Do you see that?

A Yes.

Q You used that empirical study as a basis for some of your calculations in this report; isn't that true?

A Yes.

Q Do you have a copy of that empirical study?

A I don't have -- that which I got -- I never got the full study. What I got was essentially just the distribution among the claims that CCR looked at. It's a study that they took at my request, as I recall.

Q Where is a copy of that distribution that you got from them?

A It's in the National Gypsum materials. If we didn't attach it here, I'll send it to you. It's been referenced in a number of my reports.

Q Well, we requested it and didn't get it.

So we sure would like to have a copy.

A I may have the distribution and some other materials upstairs. If you want me to take a break, I can give it to you. It's 1.4 percent for -- oh, it's on page 14.

Q I'm asking, I guess, for the reference document, not a summary of it. Did you get some kind of document from them?

A All I got was this set of numbers from CCR in their verbal description to me of how they did their study, which I testified about and I can recount to you, if you want.

Q I guess I'd like their copy of the set of numbers. What does that look like? Is that on a piece of paper somewhere, or has that been lost along the way?

A That's been done 13 years ago. I don't have a copy of it.

Q So you don't have a copy of whatever they sent you with the numbers on it?

A That's right.

Q And the verbal description, do you have a memorandum or any notes on what they said when they gave you that, or is that from recollection?

A No. I testified about that in the

National Gypsum case, but I read that section in my -- you can either read it yourself, or I can tell you what I said.

Q So the most contemporaneous records you have of what you recall they said was what you testified to in National Gypsum; is that true?

A Most certainly, yes, because it was done in that case for me by CCR. It became a standard method that I've used and, I think, other people have used since then to allocate diseases. It was updated -- CCR updated it in 1997 or '8 or some time.

Q Was this study published in some kind of booklet form or report form or something?

A No.

Q How was it delivered to you?

A Probably not e-mail in 1993. I don't know if they told me or sent me a piece of paper. Essentially, they gave me this distribution -- I asked them to do an analysis among claims that were originally filed without a specified disease, what did they determine the disease to be, and this was the distribution that they sent me without any other written description of what they had done.

Q Did they send it to you by fax? By

courier? By mail?

A I don't recall.

Q Was it on a single sheet of paper, or was it --

A It would have been on a single sheet of paper, I think. I don't think they just told me the numbers over the phone.

Q This was probably before you were using e-mail extensively or not?

A Oh, absolutely. Well, we were actually using the ARPA Net in 1985, but I don't think -- well, no, no, this was a period when I was using --

Q 1985?

A Yeah, in 1985, not for this case. We used it in the Dog and Shield case.

Q When was this study done?

A I was just telling you when we used computers.

Q Right.

A This study was done in 1992.

Q And you believe it was done at your request?

A Yes.

Q What is your basis, then, for your sentence which says "which was available to GAF in

early 1994"?

A Well, it was in the materials, testimony, and documents in the national Gypsum bankruptcy case.

Q You mean if they had read your testimony in National Gypsum, they might have been able to glean this from your testimony? Is that what you're saying?

A I would be surprised if GAF wasn't following the testimony in the course of the National Gypsum bankruptcy.

Q You're saying available to GAF means if they read your testimony in National Gypsum, that's the place it was available; right?

A They might have gotten it from CCR.

Q They might have, but you made the statement "was available."

A It certainly was available. It was a public number. It was used, relied on. It was a basis of the court's findings in that case.

Q You state at the bottom -- the sentence at the bottom of page 13 to the top of page 14, "CCR had used databases at different times to identify a group of claims that had unknown diseases in an earlier database and then had determined the

specific diseases which they had been assigned as shown in table 5."

Did I read that sentence right?

A Yes.

Q And what were the two different times of the databases that CCR used?

A I don't recall.

Q Did you ever know?

A I don't know. I may not have. I just asked them to undertake this, and they told me this did they this for 12,000 cases.

Q How many months or years and months apart were these two different times?

A Well, it would have varied, I think, when they knew, it because they would learn this stuff over time. It may -- I subsequently learned that there are -- that CCR database has two fields. They have a alleged disease and a confirmed disease. It may be that it was taken from the same database and they just looked at a set of claims that had no specific alleged disease and just saw what their confirmed was. It's possible that they did that.

Q You don't know?

A Sitting here right now, I don't.

Q Did you ever know?

A I think my inference at the time was that they had a database with two different data -- two different databases that they extracted at different points in time.

Q And when you say "databases," your impression is this is two databases and not three, four, five or some larger number of databases?

A No. I'm sure if they had done that, it would have been extracted at two different points in time. It's really the same database, just extracted at different points in time.

Let me say, GAF could have done this themselves because they had access to the data. So if they wanted to know what were the diseases within -- whether diseases were unknown, what was their -- what was the experience of CCR in determining the diseases, they could have done that themselves. The method was available to them, and the exact same data were available.

Q Do you know if, in the second database, some diseases remained unknown?

A I'm sure that that's likely to be true. They resolved some claims without knowing the disease.

Q Is it your understanding that these

percentages are only for those claims in which they did eventually get a disease?

A I don't understand your question.

Q It probably wasn't very good. Let me try it again.

You stated that these are a group of claims that had had unknown diseases in an earlier database and then had determined the specific diseases; correct?

A Yes.

Q So these were, by definition, claims in which a specific disease was eventually assigned; correct?

A Yes.

Q And your unspecified category there is 0.0; right?

A In the transition matrix, that's correct.

Q You don't know how many claims were unspecified in this first database and remained unspecified after this passage of time in the second database; correct?

A That's correct.

Q You would assume there are some?

A Yes.

Q What was the oldest claim in the GAF

database as of January 31, 1994, that still had an unknown disease shown, if you know?

A I have no idea.

Q Do you know that some claims go for many, many years and never get a disease specified?

A Oh, yes, of course.

Q Do you know if GAF -- let me strike that and start over.

Do you know if the CCR had a procedure for administratively closing claims after they got to be old and simply nonresponsive?

A That's not a basis for getting a dismissal on the merits generally. They could have closed it on their books, I guess, and it's probably a good practice from the standpoint of accounting for their claims. I guess I don't recall whether I knew that or not.

Q Did you make any assumptions in your study about what would happen if a claim was pending for 10 years and the disease was never specified and the court still never dismissed the claim?

A Well, we assume that there's some portion of the claims that will never have -- will never have a specified disease and will be closed without payment. And historically, that's 4.3 percent among

the GAF claims in this period of time. And so we assumed that on a going-forward basis, that among the pending claims as well, 4.3 percent of them will be closed without payment and without having specified disease.

Q What do you understand to be required before a claim can be closed without payment?

A I already answered that. CCR can choose to put whatever label it wants on its database at any point in time that it wants. If, as you say, there are stale claims that they think have never been -- the process is not going to be, they can just change the status of them. If you're asking about legal determination, you have to go in and move for a dismissal of the claim.

That's the way to get -- or ask the law firm to agree to dismiss the claim, either on the merits with or without prejudice. So those are ways to -- there are different kinds of closings that have different implications.

Q In the middle of your paragraph that's under table 5 on page 14, you have a sentence that says "through 1993, GAF had allocated 4.3 percent of unknowns to unspecified disease."

What does that mean?

A You have to read the sentence before. Let me start the paragraph. "This transition matrix could then be used to assign to all pending claims a specific disease category. To be conservative, I assumed that a certain fraction of pending claims would eventually close with the disease still unspecified, and I used GAF's fraction of closed unspecified disease claims to calibrate the transition matrix. Through 1993, GAF had allocated 4.3 percent of unknowns to unspecified disease. I reduced the CCR transition probability so that the expected fraction of open claims with unspecified diseases was 4.3 percent. The resulting transition probability is shown in table 6."

Q How do you know what GAF had done as of 1993?

A We know cases that they settled. We know cases that were filed. We know cases that were resolved with a resolution date. Those are pieces of information, if the dates -- the resolution dates, the settlement dates that preceded January 1, 1994, were events that happened in 1993 or before.

Q And what was the date of the data tape you were working with with that information in it?

A A 2002 data tape.

Q Do you know what the percentage of claims were that were in the unspecified category as of some data tape in 1993 for GAF or that were still unspecified in that 2002 data tape you were using?

A Claims that were unspecified in 1993 and unspecified in 2002?

Q Do you know which ones were unspecified in 1993 and how many of those became specified between then and 2002?

A Well --

Q Not closed claims, but claims that they had a specification on.

A Well, among the claims that had an unspecified disease, there were 6334 that were resolved prior to January 1, 1994, and had an unspecified disease. So presumably, those were and remained unchanged as unspecified disease claims. Essentially, they were done dealing with those claims.

Of the remaining claims, there may have been some additional ones. We count 14,588 that were open as of January 1 -- December 31st, 1993, and had an unspecified disease in the database that were used. How many of the claims had the disease added to them between January 1, '94, and the date

of our data tape, I can't tell you. But whatever it is, that's the best evidence of the disease distribution for those claims. It's the best way of allocating those claims. So thank God they did it.

Q Well, let me ask you, though, the 14,000 claims that still had unspecified diseases had been around for almost 10 years and still had unspecified diseases; isn't that true?

A They would have, by definition had to been filed prior to January 1, 1994. So they could have been around eight years or more.

Q Wouldn't you expect that the mesothelioma claims, for example, would be given some priority by plaintiffs' law firms because they were the higher-value claims?

A Not necessarily.

Q You don't observe that in the data?

A Well, I observe a couple things in the data -- in data. I can't observe specifically this issue here, but I observe that even over the course of eight, 10, 12 years, claims continue to be resolved and have diseases added to them. So simply because a claim's been around a long time doesn't mean that it's necessarily a claim that won't be compensated or identified.

And I also understand that there are reasons that law firms defer resolutions of claims because of the issues of the way the legal rules operate in some states is that every time you settle a claim and then you later take -- if you're a law firm and you have a claim to sue 10 people and you take that case to trial, some -- in some jurisdictions, every case that you've settled reduces the amount of money that you can get, even if you obtain a judgment against the people, you get a verdict in the trial. It's a set-off rule, and those set-off rules affect how lawyers choose to settle those claims. So that's an act and consideration by some law firms in some jurisdictions.

Q I'm sorry. I'm confused. I thought I knew what a set-off rule was, but I don't understand. This reduces what? The legal fees or it reduces the collection of the claimants against somebody?

A The collection of the judgment.

Q Why?

A Well, always there's a set-off for settling parties. The question is, how do you get -- if you get $1 million verdict against

defendant A and you previously settle $500,000 with other defendants for the same claim, typically, whatever you can collect from A is reduced by what you've already been paid by other people to avoid double payment to the victim, to the plaintiff.

In some jurisdictions, it's not based upon how much money you've received. It's based upon a pro rata share. If this is one of six defendants, they may -- you have 1/6 of your judgment against defendant A reduced. So there are different set-off rules in different states. Sometimes it's too costly to settle a claim if you think you're going to take the claim to trial. That's particularly relevant in meso cases.

Q Do you think that -- so you're saying that some of these might not be specified diseases because they're being prepared for trial? Is that what you're saying?

A Against other defendants.

Q And you think --

A Or tried.

Q Did you make any effort to match the Social Security numbers of these claims to find out if they had diseases specified in any of the other databases of any of the other defendants?

A I don't know if we did that here or not. I don't believe so. I think we just took the -- we took the methods -- certainly in this action we took the methods of 1994. We took one method. The other method was just assume that the distribution -- that all of the unspecified disease claims get allocated to specific disease categories in the same proportion as you observe them among specific claims. That's another method.

It would have put many more claims into the meso/lung cancer category than we actually did. So we took the more conservative method here.

Q I want to make sure that I and the jury and the Court will understand what you were looking at and what you were doing here. First, you're working in this part of the report with a data tape that is as of 2002; right?

A Yes.

Q You're looking at a group of claims that still had no disease specified in them as of 2002; is that true?

A Yes.

Q Go ahead. You're looking at claims that had been around because they were filed prior to the end of 1993; correct?

A Yes.

Q During that time period, we all recognize that claims were getting diseases assigned to them, and that was being put into the database; correct?

A Well, not completely.

Q What's not correct about that?

A In another case, the Federal Mogul case, we have three different extracts of data from the Center for Claims Resolution for three members -- three companies that were Federal Mogul companies that were all CCR members. And we find that, not infrequently, the data tape we have, for example, for Turner Newell have a claim that doesn't have a specified disease on the Turner Newell extract but will have one on the Ferodo, F-e-r-o-d-o, data from CCR. So CCR may know what the disease is for a plaintiff and they have identified a new database. Remember, CCR is settling these claims.

So the mere fact that this extract for GAF or for Turner Newell doesn't reflect what the disease is doesn't mean that CCR is ignorant of it and hasn't determined what that disease is. The implication of your questions have been that there's something odd about an eight-year passage of time about having learned what the disease is. It may be

that CCR actually does know that.

Q Would you prepare for, the court reporter, a separate index for me and provide it to me? I want to keep a little list here so that I can find things. Would you mark that filibuster 1 for me on the index? Thank you.

Perhaps you didn't hear my question. Let me ask it again. During the time period between between the end of 1993 and the data tape in 2002, some disease specifications were occurring and being entered into the database, some; is that true?

A What do you mean "the database"?

Q The 2002 database you believe was being updated between 1993 and 2002 as some claims came in with more information; is that correct?

A There were some claims that, during the course of the period of time from January 1, 1994, through 2002, where the disease was entered in the CCR database. Some of those were entered into an extract of the GAF database, but probably not all of the ones that CCR knew about were entered into the GAF database, based upon my experience with multiple CCR defendants.

Q I think we've established before that the date on which these disease updates occurred was not

one of the things that was captured in the database; is that correct?

A I'm sorry. Could you repeat the question? I was thinking of something else.

Q Yes. The date when the disease field was updated is not one of the things that was captured in the database as of 2002; is that correct?

A I think that's correct. It's not routinely captured in these kinds of databases.

Q So we might say that there was eight years of seasoning on all of the unspecified claims as of 1994 between the end of 1993 and the database in 2002; isn't that true?

A I don't understand your question, what you mean by "seasoning."

Q Those claims were sitting around getting older, and whatever was happening to them in terms of processing was happening; isn't that correct?

A Well, it's likely that most of them were resolved some time in that period of time.

Q Right. And presumably, some of the more serious and more valuable claims would be likely to be resolved; isn't that true?

A Some of the claims were resolved.

Q You don't think that there is an economic

incentive for plaintiffs' lawyers to resolve their strongest and most valuable claims rather than put time and effort into their weakest and least valuable claims?

A Well, there's a concomitant economic incentive on the part of CCR and GAF not to settle the most expensive claims, too. They each have imperatives they're operating under. It takes two to settle a claim. So, you know, certainly some of those claims were likely to have been serious claims and some weren't.

Q You have looked at processing times for disease categories before in some of your work, haven't you?

A Yes.

Q On average, the processing times of mesothelioma claims are shorter than the processing times for nonmalignant claims in virtually all of these defendants' databases; isn't that true?

A Usually the average resolution time for meso is shorter, but there is a distribution of times with some mesothelioma claims taking a long time to be resolved.

Q Do you know how frequently it occurs that a mesothelioma claim remains for eight years as an

unspecified disease and then, after eight years, it turns out that the disease specified as mesothelioma that was diagnosed eight years ago?

A I don't understand that question.

Q Let me start over. Do you know how often it is that, after eight years in the database of GAF, a claim was specified as mesothelioma and the diagnosis date had been eight years before as opposed to a claim that started as a nonmalignant and the mesothelioma showed up subsequently?

A Well, I don't know what and I can't tell from the database and neither can you what CCR knew about the diseases for these claims. Presumably, most of them were resolved in the eight-year period of time, and they may or may not have learned what the disease was at the time they resolved, it and they may or may not have entered it into the database. I've been telling you that repeatedly. Simply because the data were not entered into the database doesn't mean that CCR was ignorant of the disease.

Q How often do you think diseases were entered into the databases?

A What percentage of cases or how frequently they did it or what?

Q How often do you think the updates were done? Is that once a month? Once a year?

A It isn't done in that fashion. You do it when you get the information in or you don't. There's not a screening of all cases to see do we have all the disease input. That's not efficient. That's not the way these databases are maintained.

Q Do you agree that there is no compensable claim for an unknown disease claim?

A I don't know how you're using the term "unknown disease claim."

Q Do you agree that the defendant will not pay money unless you tell them what's wrong with them?

A That's not always true.

Q So sometimes that defendants do pay money when the claimants don't tell them what's wrong with them?

A In group settlements, there may have been an agreement to pay claims. Generally, they require the plaintiffs' law firm to identify the disease. Sometimes, they just buy a book of claims and will -- a defendant is willing to pay $100,000 to get rid of 1,000 claims at $100 a piece. They really at that point don't much care. They can get

a release for these 1,000 claimants, and that's sufficient.

Q Do you remember National Gypsum, that you concluded that there shouldn't be a category carried along for unknown diseases?

A I remember testifying to that effect, yes.

Q Did you do that for the simple reason that there is no compensable claim that's an unknown disease?

A That's not a -- that was what I said at the time. I disagree with that whole issue now.

Q And you would disagree with your testimony there because of the answer you just gave me, that there's sometimes group settlements where some unknown disease claims are picked up?

A I don't necessarily disagree with that testimony. The issue of compensable is different than compensated. They mean different things. There are cases that a defendant will -- this is one of the complaints of defendants, that there are cases that money is paid on when they think that they may not have to pay that but they're just doing it out of nuisance. That certainly happens. I was testifying about compensable claims there, but I disagree with that practice. It turned out to have

been a faulty and problematic practice that I testified to there.

Q Looking at table 7, top of page 15, is that the allocation that you have done?

A That's the result of the allocation.

Q How can we find out how many numbers came in through the allocation?

A Compare table 7 to table 3 on page 13.

Q So one of the results of the allocation was, in the mesothelioma category, the number of pending claims went from 1602 to 1774; is that right?

A Yes.

Q So it is inherent in that analysis that there were 172, if I did my subtraction right, mesothelioma claims that sat around for eight years, and they were not entered as mesothelioma claims in the CCR database?

MR. FINCH: Object to form.

BY MR. MILLER:

Q Is that correct?

MR. FINCH: Object to form. Mischaracterizes prior testimony.

THE WITNESS: I don't know what -- this data extract had them as unspecified diseases. Some

fraction of them were certainly mesos, and whether or not they were identified as mesos in a CCR database in the 2002 extract, they did not have any identification of meso or any other disease.

BY MR. MILLER:

Q So my question again is, your transition matrix takes 172 unspecified claims and recategorizes them eight years after they were filed as mesothelioma claims; is that correct?

A Could you read the question?

(The reporter read the record as requested.)

THE WITNESS: Yes, actually.

BY MR. MILLER:

Q And your transition matrix takes the difference between 284 lung cancer claims and 392 lung cancer claims and makes that recategorization; is that correct?

MR. FINCH: Object to form. It's not correct. The numbers are 2834 and 3392.

MR. MILLER: 30 -- what? 3292?

MR. FINCH: 2834 and 3392.

BY MR. MILLER:

Q Let me read them again. I must have misread them. I'm sorry. It takes 2834 lung cancer

claims, and it reclassifies the difference between that number and 3392 as lung cancer claims; is that correct?

A It takes 14 -- your question is unintelligible as state. It takes 14,588 unspecified claims and takes a number of claims that were pending on December 31st, 1993, that may or may not have settled since then. Of that 14,588, it moves about 580 of them and assumes that they are lung cancer claims -- 560.

Q So those are 560 claims that had been on the database for eight years, but the lung cancer disease category had not been assigned to them; is that correct?

A The lung cancer had not been assigned to them in a GAF database. It may have been assigned in another CCR database, and it may have been learned by CCR without having been changed on any database. All of those things happen.

Q But you haven't done any checking to see, in fact, what -- whether any of those claims were specified with any disease in some other database; is that correct?

A Well, I have not looked at that issue with regard to this database, because I don't have a

contemporaneous database from other defendants.

But I've looked generally at -- I've looked at other CCR databases, and I can say with certainty that, among that 14,588 claims that have an unspecified disease data in the GAF database, some of them will have diseases specified in a CCR database. I know that for a certainty, because that's the experience I've seen with regard to CCR databases. Why that should be the case, I don't know. You need to ask Peterson Consulting.

Q The mesothelioma and the lung cancer claims were recognized by the CCR to be the more extensive claims in general to settle than the nonmalignant claims; is that true?

A CCR paid, on average, more money to resolve mesothelioma and lung cancer claims than on average for the diseases, yes.

Q And plaintiffs' lawyers knew that as of 1994; correct?

A Yes.

Q If a plaintiffs' lawyer had a mesothelioma claim, isn't it likely that the plaintiffs' lawyer would try to notify the CCR that this is a mesothelioma claim as opposed to a less valuable claim?

A I would think that's likely.
Q Isn't it also likely that the CCR, knowing that its most serious category of claims, would have an incentive to make sure that got written down correctly?
A Not necessarily.
Q Why not?
A Sometimes, there are errors. Sometimes they settle claims and they don't put it down. Sometimes it's obviously entered in one of the CCR databases but not in another. The fact that data are missing from a database could have many sources.
Q You don't think the notion is that if you've got a mesothelioma claim, it will probably be written down as a mesothelioma claim in the database?
A Probably, but not certainly.
Q Don't you think it's more likely to be written down if it's a mesothelioma claim than a nonmalignant claim?
A Yes. And that's why the transition matrix only assigns 1.4 percent of the unknown diseases to mesothelioma as opposed to 60-some percent to nonmalignants. Or if you did a pro rata distribution, you assign fewer claims to

mesothelioma than the pro rata distribution would give you for precisely that reason. But empirically and demonstratively, it's the case that some of these turn out to be mesothelioma.

Q Where do we go to find that empirical, demonstrative evidence you refer to?

A The best source to go is the testimony and the exhibits in the National Gypsum case.

Q Which testimony shows that it's empirically and demonstrative the case that claims that are eight years old, some of them are going to be classified as mesothelioma claims?

A That isn't what I said.

Q Well, you said it's empirically and demonstratively the case that some of these turn out to be mesothelioma. So what did you mean by "some of these" in that analysis?

A Claims that don't have a specified disease in a CCR database.

Q Over what period of time, sir?

A I don't have -- I'm not bounding it or constraining it by time.

Q And again, you don't know for this matrix study that you're relying upon what the interval was between the first database that you say CCR looked

at and the second database; right?

A It had to have been no more than four years.

Q Four years or less?

A That's what I said.

Q It could not have been eight years; correct?

A CCR wasn't in existence for eight years in 1992.

Q Do you know if it inherited any databases from the asbestos claims facility?

A Ah, thank you. Yes, it did. It took the -- well, actually, it took the databases from its individual members and created the ACF database, and then it took the ACF database then was transported to the CCR database. So I will -- thank you. I'll correct my statement. Some of them could have been eight years.

Q So again, you don't know what the time frame was between the first database that they used and the second database in that study?

A It wasn't a study constrained by time.

Q It had to have some time interval between the first database and the second database; right?

A It was less than 100 years.

Q Let's change subjects on that note. Would you find Dr. Martin's report, please?

MR. MILLER: Could I get a time estimate, please?

VIDEO OPERATOR: On this tape, we've gone an hour and 8 minutes.

MR. MILLER: What's our total so far?

VIDEO OPERATOR: 5 hours and 59 minutes.

THE WITNESS: I'm going to take a two-minute break.

MR. MILLER: Let's take a break. Let's recompute.

VIDEO OPERATOR: We're going off the record. The time is approximately 4:51 p.m.

(Recess.)

VIDEO OPERATOR: We're back on the record. The time is approximately 5:02 p.m.

BY MR. MILLER:

Q Would you find Peterson Exhibit 4, the rebuttal report of Dr. Denise Martin, please?

A I have that.

Q Would you turn with me, please, to Exhibit 12? Have you looked at this exhibit, "Substituting Assumptions With a Reasonable Economic Basis Reduces Dr. Peterson's Estimate of GAF's Future Liability

Significantly"? That's the title of it.

A Briefly.

Q The first adjustment is titled "Adjustments to Reflect Propensity to Sue With Reasonable Economic Basis," and it refers to footnotes 2 and 3. Do you see that?

A Yes.

Q And have you previously read footnotes 2 and 3?

A I'm not sure whether or not I did.

Q Would you turn with me --

A I am reading it now actually in Exhibit 12.

Q Would you, please, read footnotes 2 and 3 to yourself and tell me when you've done that, sir? Sorry, are you looking up something else, sir?

A There's a reference at footnote 3 to table 38 in my report. So I'm looking at that, too.

All right. I've read footnotes 2 and 3 which are on exhibit 12, and I've also looked at my table 38 on page 49 to my report.

Q Footnote 2 says that one of the adjustments illustrated on this exhibit is using the 1991 period to calibrate the nonmalignant multiplier. Do you see that?

A Yes.
Q You chose not to do that in your own analysis; correct?
A I didn't do it.
Q Would you agree that there is a reasonable economic basis for making that assumption and that that is one reasonable way to compute the nonmalignant calibration period?
A Would you read that question, please?
(The reporter read the record as requested.)
THE WITNESS: I don't understand your question.
BY MR. MILLER:
Q Let me try it again. Economists and other experts who do asbestos estimation can sometimes disagree on methodology; isn't that true?
A Can and do.
Q And sometimes, there are several reasonable ways to do something; isn't that true?
A Yes, sometimes for some things.
Q All right. This might be what some people would say reasonable experts could disagree on. That might be another way to talk about that concept. Is that the same concept that we're

talking about?

A I don't understand that question.

Q All right. Let me ask it this way: Do you believe there is a reasonable economic basis or there is not a reasonable economic basis for using 1990 through 1991 as the calibration period to estimate the nonmalignant multiplier?

A I don't understand what "reasonable economic basis" is. This is not economics.

Q You don't think it's economics?

A No.

Q Why not?

A Essentially, it's dealing with the behavioral science of empirical analysis of legal process. So it's kind of a broader set of skills than simply economics.

Q So you don't have any opinion one way or another as to whether an economist would find there was a reasonable economic basis for this?

A I think -- I don't want to be glib. It's a different issue about is it reasonable analytic assumption and a reasonable -- I'm not an economist, proudly not, and so you're asking me to put myself in the shoes of what's reasonable for an economist to do. I have more difficulty in saying than

someone who understands asbestos litigation and has studied it for 25 years. Do I think that this is a reasonable analytic step to do? That's a question I can address more comfortably than asking me to put myself in the skin of an economist.

Q I will ask, then, the question that you suggest you're more comfortable with. Do you think that this is a reasonable analytic step to do?

A No.

Q Why not?

A While I think that there probably was some acceleration of claim filing or generation of additional claims because of the Georgine -- pendency of the Georgine class action, I think it's inappropriate to assume that all of the differences between the '92 and '93 nonmalignant claim filings and 1990 and '91 is due to that acceleration, particularly in the absence of any empirical demonstration of an acceleration. It's too aggressive of an assumption. I don't think it's reasonable to think that's the only reason for nonmalignant claim filings to have increased in '92 and '93.

Q Footnote 3 refers to the use of the decreasing propensity to sue model as set out in

table 38 to forecast malignant claims.

Do you see that?

A Yes.

Q Again, I assume that since you're not an economist, you don't have any opinion on whether there is a reasonable economic basis for using that approach; is that correct?

A I don't even understand the nature of the representation of "reasonable economic basis."

Q Changing it to the question that you said you feel more comfortable with, do you think this is a reasonable analytic step?

A I don't think, in light of the experience of this defendant and what was happening at this time, that it is a reasonable estimate. It's certainly not the best estimate.

Q What is the experience of this defendant that you're referring to in that answer?

A Well, in asbestos litigation as a whole. In 1992 and 1993, there were some dramatic changes in asbestos litigation, in the latter part of 1992 and 1993 that made it unlikely that GAF would see a decrease in the propensity to sue in future years.

Such things as the entry of the verdicts in the Baltimore consolidated litigation, the

increased use of consolidations among various courts across the country, the significant addition of assets to asbestos litigation to compensate claims. All of those were significant changes, among other things, that made it unlikely that the propensity to sue would decline. Plus, GAF's own claims experience were inconsistent with that.

Q How was GAF's own claims experience inconsistent?

A For two of the three cancers, the propensities to sue were increasing. Its propensity to sue for mesos had declined only because of the -- in the last year, but over the long term had been increasing and the nonmalignant claims were up sharply.

Q If you go back to the first page, the second entry is "adjustment to reflect claims pay profile" --

A I'm sorry. Where are you?

Q The first page of exhibit 12, the second entry is titled "Adjustment to Reflect Claims Pay Profile With Reasonable Economic Basis," referring to footnotes 4 and 5. Do you see that?

A I'm sorry. I'm lost. You're on exhibit 12, first page?